upon the rights of the parties to the action. *Muskogee Gas, etc., Co.* v. *Haskell* (1913) 33 Okla. 358, 132 Pac. 1098; *State* v. *Jones* (1914) 107 Miss. 462, 65 So. 511. Hence the question here was moot. In the absence of mandatory statutes based upon constitutional provisions, courts have steadfastly refused to decide moot questions, 2 Story, Commentaries on the Constitution (5th ed.) § 1571, p. 387 *et seq.* and n.; *California* v. *San Pablo & T. R. Co.* (1893) 149 U. S. 308, 13 Sup. Ct. 876, since this would constitute an unauthorized enlargement of the duties of the courts, *cf.* U. S. Constitution, Art. III, §§ 15, 16, not being a judicial function. *United States* v. *Evans* (1909) 213 U. S. 297, 29 Sup. Ct. 507. Accordingly, a statute granting to the United States the right of appeal in criminal cases without prejudice to the rights of the defendant, 31 Stat. 1341, was held unconstitutional. *United States* v. *Evans, supra.* On the other hand, several states have express enactments, *cf.* Miss. Const., Art. III, § 22, Miss. Code (1917) § 16(2); Ind. Const., Art. I, § 14, Ind. Rev. Stat. (1914) §§ 2162, 2212, giving the state the right of appeal in order to bind the inferior courts to a uniform application of the law. *Gulfport* v. *Stratakos* (1907) 90 Miss. 489, 43 So. 812; *State* v. *Hunt* (1893) 137 Ind. 537, 37 N. E. 409. For a discussion of declaratory judgments in general, see *infra,* p. 106. It should also be noted that courts will not generally entertain appeals by the government in criminal cases, as that would constitute such double jeopardy as is prohibited both by the common law and by the constitutions of the United States and the various states. *Grafton* v. *United States* (1907) 206 U. S. 333, 27 Sup. Ct. 749; *United States* v. *Sanges* (1892) 144 U. S. 310, 12 Sup. Ct. 609; *People* v. *Miner* (1892) 144 Ill. 308, 33 N. E. 40; *contra, State* v. *Lee* (1894) 65 Conn. 265, 30 Atl. 1110.

DIVIDENDS—WHEN EQUITY WILL ORDER DIRECTORS TO DECLARE A DIVIDEND. —The board of directors of the defendant corporation refused to declare a dividend, although the surplus profits greatly exceeded the capital stock and all necessary needs for expansion. No fraud was alleged, but it was the avowed policy of the directors to retain all future profits, other than a small regular dividend, in order to lower the price of its product, not to meet competition, but for the benefit of the public. On petition of minority stockholders, *held,* the directors must distribute a substantial part of the surplus profits. *Dodge* v. *Ford Motor Co.* (Mich. 1919) 170 N. W. 668.

Although individual stockholders have no right at law to the profits of a corporation until a dividend has been duly declared, *Ford* v. *Easthampton Rubber Thread Co.* (1893) 158 Mass. 84, 32 N. E. 1036, and the declaration of a dividend rests within the discretion of the directors, *Schell* v. *Alston Mfg. Co.* (C. C. 1906) 149 Fed. 439; 2 Cook, Corporations (6th ed.) § 545, equity will grant relief to minority stockholders where the directors have acted fraudulently in withholding the profits. *Hiscock* v. *Lacey* (1894) 9 Misc. 578, 30 N. Y. Supp. 860. It has been held that in the absence of fraud or bad faith an injudicious refusal to declare dividends gives no ground for equitable interference. *Blanchard* v. *Prudential Ins. Co.* (1912) 80 N. J. Eq. 209, 83 Atl. 220; 2 Cook, *op. cit.,* § 545. And yet since an unreasonable or arbitrary refusal to declare dividends seems to provide grounds for equitable interference, see *Storrow* v. *Texas Consol. Compress & Mfg. Ass'n.* (C. C. A. 1898) 87 Fed. 612; *Raynolds* v. *Diamond Mills Paper Co.* (1905) 69 N. J. Eq. 299, 307, 60 Atl. 941; Morawetz, Private

Corporations (2nd ed.) § 447, it appears that some degree of sound judgment and consideration for minority stockholders as well as mere honesty may be required of the directors in the exercise of their discretion. 3 Southern Law Quarterly 281. Where injudicious judgment shades into unreasonableness or arbitrariness is not entirely clear. The existence of undistributed profits alone is not sufficient cause for equity to act, *Stevens* v. *United States Steel Corporation* (1905) 68 N. J. Eq. 373, 59 Atl. 905; *Marks* v. *Brewing Co.* (1910) 126 La. 666, 52 So. 983; see *Richardson* v. *Vermont & Mass. R. R.* (1872) 44 Vt. 613, 622, but the retention of net profits, meaning thereby, earnings over and above the needs of the business, including expansion and emergencies, seems to furnish reason for equitable interference. *Trimble* v. *American Sugar Refining Co.* (1901) 61 N. J. Eq. 340, 348 (*semble*); see *Stevens* v. *United States Steel Corporation, supra,* at p. 377; *Storrow* v. *Texas Consol. Compress & Mfg. Ass'n., supra,* at p. 616. In the principal case, since it was demonstrated almost with mathematical certainty that the corporate needs, as above defined, were much less than the accumulated profits, the relief granted was amply justified.

ELECTIONS—DEPRIVATION OF RIGHT TO VOTE—ACTION FOR DAMAGES.—By an effective conspiracy among the defendants, two of whom were election judges, the plaintiffs were prevented from casting their ballots in an election in which candidates for presidential electors, United States Senator and Representative were to be voted for. The plaintiffs brought an action for damages. *Held,* a recovery should be allowed. *Wayne* v. *Venable* (C. C. A., 8th Cir. 1919) 260 Fed. 64.

When one entitled to vote has been prevented from so doing he may recover damages if the action of the election officials has been willful and malicious, *Ashby* v. *White* (1703) 1 Bro. P. C. 62 (*semble*); *Hanlon* v. *Partridge* (1897) 69 N. H. 88, 44 Atl. 807; *Swafford* v. *Templeton* (1902) 185 U. S. 487, 22 Sup. Ct. 783 (*semble*), but in general the officials are excused if they act in good faith. *Perry* v. *Reynolds* (1885) 53 Conn. 527. 3 Atl. 555; *Tozer* v. *Child* (1857) 7 El. & Bl. 377; *contra, Lincoln* v. *Hapgood* (1814) 11 Mass. 350. Where, however, statutes have been interpreted as making the duties of election officers ministerial only, a recovery may be had whether or not they acted with malice. *Lane* v. *Mitchell* (1911) 153 Iowa 139, 133 N. W. 381; *Gillespie* v. *Palmer* (1866) 20 Wis. 544, 558. The fact that the defendants are liable criminally will not prevent a civil suit. *Hanlon* v. *Partridge, supra; Larned* v. *Wheeler* (1886) 140 Mass. 390, 5 N. E. 290.

EQUITY—JURISDICTION BY CONSENT—SEPARATION AGREEMENT.—A separation agreement voluntarily entered into between husband and wife provided for the payment to the wife of a fixed sum of $700 monthly, but further stipulated that either party could apply to the courts for a modification in the event of any material change in his or her circumstances. Later the wife became independently wealthy while the income of the husband shrank. The husband, after an unsuccessful attempt to induce the wife to accept a smaller sum, brought a bill in equity for specific performance, asking that the sum agreed upon be greatly reduced in view of his circumstances. *Held,* in such a case the court would not determine to what allowance the wife was entitled. *Stoddard* v. *Stoddard* (N. Y. 1919) 124 N. E. 91.

It is well settled that parties cannot by agreement foist upon a